

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BECKLEY**

MICHAEL D. ROSE,  
and EDWARD L. HARMON,  
*on their own behalf and on behalf  
of all others similarly situated,*

Plaintiffs,

v.

CIVIL ACTION NO. 5:22-cv-00405

MICHAEL FRANCIS,  
*individually and as an employee of  
the West Virginia Division of Corrections  
and Rehabilitation,*  
THE RALEIGH COUNTY COMMISSION,  
John/Jane Doe Employees of the Raleigh  
County Commission,  
THE FAYETTE COUNTY COMMISSION,  
John/Jane Doe Employees of the Fayette  
County Commission,  
THE GREENBRIER COUNTY COMMISSION,  
John/Jane Doe Employees of the Greenbrier  
County Commission,  
THE MERCER COUNTY COMMISSION,  
John/Jane Doe Employees of the Mercer  
County Commission,  
THE MONROE COUNTY COMMISSION,  
John/Jane Doe Employees of the Monroe  
County Commission,  
THE SUMMERS COUNTY COMMISSION,  
John/Jane Doe Employees of the Summers  
County Commission,  
THE WYOMING COUNTY COMMISSION,  
John/Jane Doe Employees of the Wyoming  
County Commission,  
PRIMECARE MEDICAL OF WEST VIRGINIA, INC.,  
John/Jane Doe PrimeCare Employees,  
JOHN/JANE DOE CORRECTIONAL OFFICERS,  
BETSY JIVIDEN, *individually as an employee of the  
West Virginia Division of Corrections and Rehabilitation,*  
WEXFORD HEALTH SOURCES, INC.  
John/Jane Doe Wexford Employees,

BRAD DOUGLAS, *individually and in his official capacity as the acting Commissioner of the West Virginia Division of Corrections and Rehabilitation*,  
JEFF S. SANDY, *individually and in his official capacity as the Cabinet Secretary of the West Virginia Division Department of Homeland Security*, and  
WILLIAM K. MARSHALL, III  
*individually and in his official capacity as the Commissioner of the West Virginia Division of Corrections and Rehabilitation*,

Defendants.

### **ORDER**

The Court was advised by electronic mail from counsel for certain Defendants this morning of the following developments in this action:

Plaintiffs and the State Defendants (Jividen; Sandy; Douglas; Marshall; and Francis) have reached a resolution of this matter. These parties believe that this resolution will require the formulation of a Limited Fund Class Action and ultimately approval of the Court. This resolution does not include the other parties, namely the Counties and medical providers (Primecare and Wexford).

Lead Counsel for the parties to this agreement (Stephen New, Michael Mullins and Chip Williams), wish to inquire with the Court or its Clerk as to whether the Court would like to hold a status conference or otherwise be advised of the settlement and/or the plan to formulate a class. Of note, these parties are aware that they have several pending deadlines before the Court on various Motions that now appear moot, including:

- Motion for Class Certification (as to these Defendants only)(ECF 518);
- Motion to Amend (as to these Defendants and Mark Sorsaia only)(ECF 718)
- Justice and Abraham's Objections to Magistrate Court Decision (ECF 784);
- Order and Proposed Findings and Recommendations (ECF 774): objections are not yet due;

Thus, the parties would like some guidance from the Court as to its preference how these parties proceed forward.

Prior to sending this email, I circulated to Mr. New and Mr. Williams, who both approved it as drafted and are carbon copied on it. It is being sent as a joint submission.


Thank you for your time.

In accordance with counsel's request, it is **ORDERED** that a status conference be **SCHEDULED for November 9, 2023, at 12:30 p.m. in Beckley**. Lead counsel for all parties are directed to appear in person.

The Clerk is **DIRECTED** to transmit a copy of this Order to all counsel of record and to any unrepresented party.

ENTER: November 7, 2023



  
Frank W. Volk  
United States District Judge